# TENNESSEE STATE BOARD OF EQUALIZATION BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Nickey Business Center, LP	)
	Ward 073, Block 007, Parcels 00023, 00024, 00045,	) Shelby County
	00047 and 00048	)
	Industrial Property	)
	Tax Year 2005	)

#### INITIAL DECISION AND ORDER

### Statement of the Case

The subject property is presently valued at \$3,000,000 as set forth in exhibit A.

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on September 20, 2006 in Memphis, Tennessee. In attendance at the hearing were registered agent Jim Schwalls and Shelby County Property Assessor's representative Larry Killebrew, A.A.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 9.8 acre tract improved with 131,542 square feet of flex warehouse space constructed in 1978 located at Viscount and New Getwell in Memphis, Tennessee.

The taxpayer contended that subject property should be valued at \$2,364,381. In support of this position, the income approach was introduced into evidence.

The assessor contended that subject property should be valued at \$3,200,000. In support of this position, income approaches utilizing both actual and market data were introduced into evidence. In addition, Mr. Killebrew sought to introduce the listing of subject property in September of 2006 for \$4,300,000.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$2,834,700 in accordance with the income approach discussed below.

The administrative judge finds that Mr. Killebrew's income approach cannot receive the weight it might otherwise receive for at least two reasons. First, the administrative judge finds that subject property does not constitute an investment grade property. Second, given

<sup>&</sup>lt;sup>1</sup> Indeed, Mr. Killebrew himself characterizes subject property as "Class C" in his income approaches.

a January 1, 2005 assessment date, the administrative judge finds it inappropriate to rely on post-assessment date data such as capitalization rates from the second quarter of 2006.

The administrative judge finds that Mr. Schwalls' income approach also cannot receive the weight it might otherwise receive. The administrative judge finds that Mr. Schwalls focused on the actual experience of subject property and largely ignored the market. For example the actual expenses vary and almost certainly include both atypical, and capital expenditures.

Notwithstanding the foregoing, the administrative judge finds that both income approaches have probative value and support the following valuation of subject property:

Potential Gross Income	\$ 947,102
Less Vacancy & Collection Loss	- 189,420
Effective Gross Income	\$ 757,682
Less Operating Expenses	- 375,000
Net Operating Income	\$ 382,682
Capitalized at 13.5%	÷135
Indicated Value Before Rounding	\$2,834,681

The foregoing income approach reflects a rental rate of \$7.20 per square foot and a 20% vacancy and collection loss allowance. The administrative judge recognizes that additional proof would almost certainly support various modifications to the above income approach.

The administrative judge finds that January 1, 2005 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). The administrative judge finds that events occurring after January 1, 2005 are normally irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumption reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3. The administrative judge finds that the listing of subject property in September of 2006 is simply irrelevant.

#### **ORDER**

It is therefore ORDERED that the values and assessments set forth in exhibit B are hereby adopted for tax year 2005.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12

of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "must be filed within thirty (30) days from the date the initial decision is sent." Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal "identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"; or

- 2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
- 3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10th day of October, 2006.

MARK J. MINSKY

ADMINISTRATIVE JUDGE

DEPARTMENT OF STATE

ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Jim Schwalls Tameaka Stanton-Riley, Appeals Manager

## EXHIBIT A

Parcel ID	Land Value (\$)	Improvement Value (\$)	Total Value (\$)	Assessment (\$)
073-007-00023	142,100	242,600	384,700	153,880
073-007-00024	125,200	163,300	288,500	115,400
073-007-00045	438,200	1,198,000	1,636,200	654,480
073-007-00047	81,900	227,700	309,600	123,840
073-007-00048	94,600	286,400	381,000	152,400

### EXHIBIT B

Parcel ID	Land Value (\$)	Improvement Value (\$)	Total Value (\$)	Assessment (\$)
073-007-00023	142,100	221,400	363,500	145,400
073-007-00024	125,200	147,400	272,600	109,040
073-007-00045	438,200	1,107,800	1,546,000	618,400
073-007-00047	81,900	210,700	292,600	117,040
073-007-00048	94,600	265,400	360,000	144,000